

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed July 13, 2004. In order to advance prosecution of this Application, Claims 1, 7, 9, 12, 18, 20, 26, 32, 33, and 37 have been amended and Claims 6, 16, and 31 have been canceled without prejudice or disclaimer. Applicant respectfully requests reconsideration and favorable action for this Application.

Claims 1, 3, 5, and 10 stand rejected under 35 U.S.C. §102(e) as being anticipated by Johnstone. Independent Claim 1 has been amended to include the limitation of Claim 6 and address the 35 U.S.C. §112, second paragraph, rejections applied to Claim 6. Therefore, Applicant respectfully submits that Claims 1, 3, 5, and 10 are not anticipated by the Johnstone patent.

Claim 4 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Johnstone in view of Isoyama. Independent Claim 1, from which Claim 4 depends, has been shown above to be patentably distinct from the Johnstone patent. Moreover, the Isoyama patent does not include any additional disclosure combinable with the Johnstone patent that would be material to patentability of these claims. Therefore, Applicant respectfully submits that Claim 4 is patentably distinct from the proposed Johnstone - Isoyama combination.

Claims 11, 16, and 36 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Johnstone in view of Kaycee. Independent Claim 1, from which Claim 11 depends, and Independent Claim 26, from which Claim 36 depends, have been amended as discussed above and below to be patentably distinct from the Johnstone patent. Independent Claim 16 has been cancelled without prejudice or disclaimer in favor of Claim 18 shown to be patentably distinct from the Johnstone patent.

Moreover, the Kaycee patent does not include any additional disclosure combinable with the Johnstone patent that would be material to patentability of these claims. Therefore, Applicant respectfully submits that the rejections of Claims 11, 16, and 36 are now moot.

Claims 20-23 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Johnstone in view of Mendelson. In the reason for rejection, the Examiner identifies the Milles patent and not the Mendelson patent as being used in combination with the Johnstone patent. Based on the reasons for rejection and the rejections to the dependent claims, Applicant views the rejection as erroneously identifying the Mendelson patent and addresses the rejection as though the Milles patent is what the Examiner intended to cite in support of the rejection. Independent Claim 20 has been amended to include the limitations found in Claims 6 and 31 for which there is no rejection based on prior art. Therefore, Applicant respectfully submits that Claims 20-23 are in condition for allowance.

Claims 24 and 25 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Johnstone in view of Milles and further in view of Isoyama. Independent Claim 20, from which Claims 24 and 25 depend, has been shown above to be patentably distinct from the proposed Johnstone - Milles combination. Moreover, the Isoyama patent does not include any additional material combinable with either the Johnstone or Milles patents that would be material to patentability of these claims. Therefore, Applicant respectfully submits that Claims 24 and 25 are patentably distinct from the proposed Johnstone - Milles - Isoyama combination.

Claims 26-30 and 35 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Johnstone. Independent

Claim 26 has been amended to include the limitations of Claim 31. Therefore, Applicant respectfully submits that the rejections of Claims 26-30 and 35 are now moot.

Claims 1, 3-7, 9-15, 18-33, 35-38, and 40 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Claims 1 and 26 have been amended to clarify and provide consistency for the term 'address' used in the claims. Claims 6, 18, 20, and 31 have been amended to show that the use of the slash means both 'and' and 'or' in the claims. Claims 18 has been amended so that segmenting packets can be performed on packets from any of the ingress and egress traffic. Therefore, Applicant respectfully submits that Claims 1, 3-7, 9-15, 18-33, 35-38, and 40 are in accordance with 35 U.S.C. §112, second paragraph.

Claims 6, 7, and 30 stand objected to for various informalities. With respect to Claim 6, there is no language therein directed to routing traffic based upon destination address. Claim 30 is also consistent with the operation of the access device depicted in FIGURE 2 of the Application. Applicant respectfully requests the Examiner to clarify the objection to Claims 6 and 30.

Applicant notes with appreciation the allowability of Claims 12-15, 37, 38, and 40 if amended to overcome the 35 U.S.C. §112, second paragraph, rejections and placed into independent form. Claims 12 and 37 have been amended to address the 35 U.S.C. §112, second paragraph, rejections and placed into independent form as suggested by the Examiner. Therefore, Applicant respectfully submits that Claims 12-15, 37, 38, and 40 are in condition for allowance.

Applicant notes that Claims 6, 7, 9, 18, 19, and 31-33 only stand rejected under 35 U.S.C. §112, second paragraph, and have not been rejected based on any prior art.

Accordingly, Independent Claim 1 has been amended to include the limitations of Claim 6, Independent Claim 18 has been amended into independent form in conjunction with the cancellation of Claim 16 without prejudice or disclaimer, and Independent Claim 26 has been amended to include the limitations of Claim 31. Independent Claims 1, 18, and 26 have also been amended to address the matters raised by the Examiner in the 35 U.S.C. §112, second paragraph, rejections. Therefore, Applicant respectfully submits that Claims 1, 3-5, 7, 9-11, 16, 19, 2630, 32, 33, 35, and 36 are in condition for allowance.

With the presentation of two new independent claims, an additional filing fee is due. Attached herewith is a check made payable to the "Commissioner of Patents and Trademarks" in an amount of \$400.00 to satisfy the excess independent claims fee of 37 C.F.R. §1.16(b).

This Response to Examiner's Final Action is necessary to address the new grounds of rejection and newly cited art raised by the Examiner. This Response to Examiner's Final Action could not have been made earlier as the Examiner has only now raised new grounds of rejection and identified new prior art in support thereof.

Applicant respectfully requests withdrawal of the finality of the present Office Action. "Before final rejection is in order a clear issue should be developed between the examiner and applicant." M.P.E.P. §706.07. A clear issue has not been developed between the Examiner and Applicant with respect to the Johnstone patent (as well as the Isoyama, Kaycee, Mendelson, and Milles patents) as the Examiner has only now used the Johnstone patent as the main support for the rejection of these claims. According to M.P.E.P. §706.07, hasty and ill-considered final rejections

are not sanctioned. "The applicant who is seeking to define his or her invention in claims that will give him or her the patent protection to which he or she is justly entitled should receive the cooperation of the examiner to that end, and not be prematurely cut off in the prosecution of his or her application." M.P.E.P. §706.07. "To bring the prosecution to as speedy conclusion as possible and at the same time to deal justly by both the applicant and the public, the invention as disclosed and claimed should be thoroughly searched in the first action and the references fully applied; and in reply to this action the applicant should amend with a view to avoiding all the grounds of rejection and objection." M.P.E.P. §706.07.

Applicant responded to the first Office Action of July 13, 2004 and overcame the Gupta, et al. patent used by the Examiner to reject these claims. Now the Examiner comes back with the Johnstone patent by itself and in various combinations with the above identified patents which was available to the Examiner for consideration in the previous Office Action but which the Examiner did not use as a basis for any rejection of these claims in the previous Office Action. The Examiner now uses the Johnstone patent in the same manner as the Gupta, et al. patent was used in the previous Office Action. Thus, the Examiner has not followed the M.P.E.P. where it states that "[s]witching from . . . one set of references to another by the examiner in rejecting in successive actions claims of substantially the same subject matter, will alike tend to defeat attaining the goal of reaching a clearly defined issue for an early termination, i.e., either an allowance or a final rejection." Amendments to the claims in response to the previous Office Action did not substantially change the subject matter of the claims to

force the Examiner to now use the Johnstone patent by itself and in combination where it could not have been used in the previous Office Action. Moreover, no amendment was made to Independent Claim 26 whatsoever. Based on this fact alone, the finality of the present action is premature.

As a result, Applicant has not been given the cooperation of the Examiner as required and has been denied an opportunity to fully address the Johnstone and other patents and associated new grounds of rejection that could have been cited in the previous Office Action. By not providing Applicant the capability to fully respond to the Johnstone patent without the assurance that the response would be considered and entered, the Examiner has prematurely cut off prosecution of the present Application. Applicant has not been given a full and fair hearing to which it is entitled and a clear issue has not been developed as required. Therefore, Applicant respectfully submits that the final rejection is premature and that the finality of the present Office Action be withdrawn.

CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for other apparent reasons, Applicant respectfully requests allowance of all pending claims.

No additional fee is believed to be due. However, the Commissioner is hereby authorized to charge these fees and any extra fee or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,
BAKER BOTTS L.L.P.
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A handwritten signature in dark ink, appearing to read 'Charles S. Fish', is written over a horizontal line.

Charles S. Fish

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